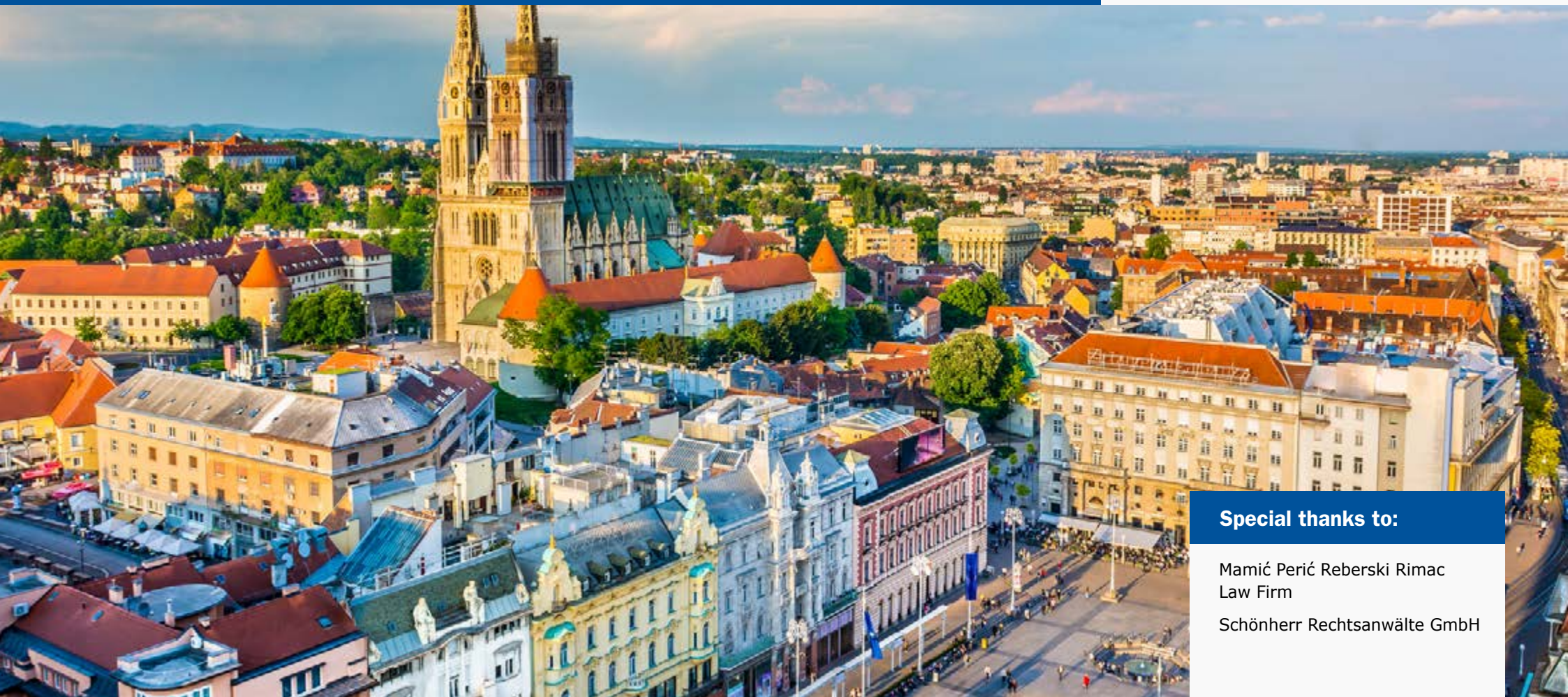
Business Reorganisation Assessment

Croatia

European Bank
for Reconstruction and Development



Special thanks to:

Mamić Perić Reberski Rimac Law Firm

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Part A

General Information

Macro Data

4.045	4.7%	US$ 16,250	kn Croatian kuna – HKR	18%	0.7%	9.4%
Population (million)[1]	GDP growth rate[1]	GDP per capita[1]	Currency	Corporate tax rate[2]	Inflation rate[1]	Unemployment rate[1]

Insolvency Legislation

The primary legislative text governing pre-insolvency and insolvency (bankruptcy) proceedings of non-bank legal entities and entrepreneurs (natural persons) in Croatia is the **Insolvency Law** (the Insolvency Law) (Official Gazette of the Republic of Croatia Nos. 71/2015 and 104/2017) as amended in 2017. In addition, for large companies meeting the requirements of systemic importance, the **Act on Extraordinary Administration Procedure in Companies of Systemic Importance** applies. The licensing and training of insolvency practitioners (known as bankruptcy administrators) is regulated by a separate **ordinance** of 30 September 2015.

Other relevant secondary legislation based on the Insolvency Law includes: by-laws on contents and form of the forms for submissions in bankruptcy and pre-bankruptcy proceedings (Official Gazette No. 67/2019); by-laws on the criteria and manner of calculation and payment of fees of bankruptcy administrators (Official Gazette No. 105/2015); by-laws on determination of the bankruptcy administrator list (Official Gazette Nos. 104/2015, 106/2019 and 141/2020); by-laws on passing the expert exam, education and training of bankruptcy administrators (Official Gazette Nos. 104/2015, 17/2017, 84/2019 and 130/2020); by-laws on the types and amounts of fees of the Financial Agency in pre-bankruptcy proceedings and on the fee of the Financial Agency for submission of motions for opening of bankruptcy proceedings (Official Gazette No. 106/2015); by-laws on the list of the units of the Financial Agency and areas of their competence in pre-bankruptcy proceedings (Official Gazette No. 106/2015); and by-laws on the conditions and the manner for the selection of a bankruptcy administrator by a method of random selection (Official Gazette No. 106/2015).

Directive (EU) 2019/1023 (the Restructuring Directive) on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt has not yet been implemented, but a legislative proposal is expected by October 2021 by way of amendments to the Insolvency Law.

[1] **IMF – Source as of June 2021:** www.imf.org/en/Countries/BGR

[2] **PWC – Source as of August 2021:** www.taxsummaries.pwc.com/bulgaria/corporate/taxes-on-corporate-income

[3] The Croatian insolvency legislation used to include the Act on Financial Operations and Pre-Bankruptcy Settlement (Official Gazette Nos. 108/2012, 144/2012, 81/2013, 112/2013, 78/2015 and 71/2015) however the insolvency provisions of this Act are no longer in force.

Insolvency Data

Information on insolvency proceedings can be found on the following website maintained by the Ministry of Justice and Public Administration: **e-Oglasna ploča** (e-Announcement Board). The Ministry publishes statistical data on an annual basis, covering all types of court cases, including pre-bankruptcy and bankruptcy procedures **here**.

The data is available under the following links (in Croatian only) for **2020**, **2019** and **2018**. The data does not show the outcome of bankruptcy proceedings and whether these resulted in liquidation or reorganisation of the debtor business.

Year	Pre-bankruptcy cases			Bankruptcy cases		
	Received	Resolved	Pending	Received	Resolved	Pending
2018	6	35	14	9,207	9,422	8,646
2019	9	17	6	7,166	8,436	7,108
2020	2	4	4	4,796	6,194	6,101

With regard to pre-bankruptcy settlement cases under the previously applicable insolvency provisions of the Act on Financial Operations and Pre-Bankruptcy Settlement (see footnote above), the Croatian Financial Agency (FINA) has published an aggregated overview of such cases for the period from 2012 to 2021 **here**.

Statistical information showing overall trends in insolvency (bankruptcy) proceedings from 2017 to 2021 is also available on the **website of the State Statistics Bureau**. This information does not include pre-bankruptcy proceedings.

Certain information on insolvency proceedings (such as lists of insolvency practitioners, changes in legislation, basic information on proceedings and auctions of assets in insolvency) is available on the judicial network **website of Sudačka mreža**. With regard to consumer bankruptcy cases, which fall outside the scope of the EBRD Business Reorganisation Assessment, data is published by the Financial Agency (FINA) **here**.

Information about whether a company is subject to an insolvency procedure is available on the Companies Register's website.

Company Information

The Croatian company law framework is mainly governed by the 1993 Companies Act (as amended). The Act has been amended many times and no consolidated version is available in Croatian or English. In Croatia the Companies Register is managed by the commercial courts. Data on registered entities is accessible online and free of charge on the website of the **Court Register of the Ministry of Justice and Public Administration**.

Insolvency Courts, Regulatory Authorities and Practitioners

Insolvency (bankruptcy) proceedings fall within the competence and exclusive jurisdiction of commercial courts as first instance courts. Links to all commercial courts are available **here**. As a general rule, the jurisdiction of the court is determined on the basis of the registered seat of operations of the debtor as at the date of submission of the petition for the commencement of insolvency proceedings. The **High Commercial Court of the Republic of Croatia** acts as the second instance (appeal) court, and the final level of appeal is the **Supreme Court of the Republic of Croatia**, which can decide on extraordinary remedies. Furthermore, the **Constitutional Court of the Republic of Croatia** can decide on constitutional lawsuits, e.g. in the case of breach of constitutional rights by court decisions.

The main government authority responsible for regulation of insolvency proceedings is the Ministry of Justice and Public Administration. The Ministry is responsible for licensing and supervision of insolvency practitioners, which are registered on two lists: List A and List B, with the main difference between the lists being that insolvency practitioners on List B do not have the requisite professional experience (at least one year) and training to be on List A. The **Judicial Training Academy** is responsible for delivering any training to insolvency practitioners. A list of insolvency practitioners and their cases is published on **e-Oglasna ploča**.

Other competent authorities involved in insolvency procedures relating to businesses (other than banks and financial services firms) are the **Financial Agency (FINA)**, which has certain competences within bankruptcy, pre-bankruptcy and consumer bankruptcy procedures, and the **Agency for Employees Claims Insurance**.

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Part B

Business Reorganisation

References to Articles are to Articles of the Insolvency Law, unless specified otherwise. For an explanation of technical terms, please see the **Glossary of the Main Assessment Report**

Are there any incentives for extrajudicial voluntary agreements (workouts)?

No, there are no incentives for debtors and creditors to conclude an extrajudicial voluntary agreement outside of insolvency proceedings.

What is the nature and purpose of the reorganisation procedure?

Under the Insolvency Law there are two reorganisation procedures: the pre-bankruptcy procedure (Predstečajni postupak) and the bankruptcy procedure (Stečajni postupak). While the main purpose of the bankruptcy procedure is liquidation, this procedure also envisages the restructuring of the debtor through a bankruptcy plan. **Click here** for a high-level overview of these two procedures.

Pre-bankruptcy procedure

This is a court-supervised reorganisation procedure where a restructuring plan may be proposed and agreed with creditors and may include measures for financial, as well as operational restructuring of the debtor's business (Articles 21 to 27). The aim of the pre-bankruptcy procedure is to rescue the debtor's business.

Bankruptcy procedure

This procedure may be carried out through the liquidation of the debtor's assets and subsequent satisfaction of creditors or, alternatively, through the implementation of a bankruptcy plan. The bankruptcy plan may include measures of financial or operation restructuring, such as maintenance of all or part of the debtor's assets to continue the business and the transfer of part or all of the assets of the debtor. The plan may also determine the settlement arrangements for creditors, including a reduction or postponement of payment obligations (Article 303).

Who can commence the process and what entry conditions apply?

Pre-bankruptcy procedure

The pre-bankruptcy procedure may be opened in the case of imminent illiquidity of the debtor. This is established if it is likely that the debtor will not be able to meet its existing payment obligations as they fall due (Article 4). It may be commenced by the debtor through its authorised body or by creditors if the debtor consents (Articles 11 and 25). The application needs to be accompanied by certain documents, including financial statements of the debtor, a list of the debtor's assets and liabilities, proof of expected insolvency and a proposal of a restructuring plan (Articles 13, 16, 17 and 26).

Bankruptcy procedure

This procedure can lead to the implementation of the bankruptcy plan and may be commenced if the insolvency of the debtor has been established, either on the grounds of over-indebtedness (balance-sheet insolvency) or inability to pay (cash-flow insolvency) (Article 5).

Similar to the pre-bankruptcy procedure, the likelihood of illiquidity, e.g. if it is likely that the debtor will not be able to meet its payment obligations as they fall due, may also lead to the opening of the procedure (Article 5 (4)).

The bankruptcy application may be made by the debtor through its authorised body or by creditors. The application needs to be accompanied by certain documents, including financial statements, a list of assets and liabilities of the debtor and proof of insolvency or expected insolvency (Articles 13 and 17). In certain circumstances, the Financial Agency also has the right and the obligation to submit an application for opening of the procedure (Article 110). If bankruptcy proceedings have been initiated, the initiation of pre-bankruptcy proceedings is not permitted (Article 15).

A debtor is considered insolvent (unable to make payments) when it is permanently unable to meet its due and payable monetary obligations. Even if the debtor has paid or can pay, fully or partially, debts to some of its creditors, it does not necessarily mean that it is solvent (Article 6(1)).

There is a legal presumption of insolvency if: the bank accounts of the debtor have been blocked based on one or more valid payment titles evidenced by the Financial Agency (FINA) during a period of more than 60 days, which is evidenced by a certificate issued by FINA at the request of the debtor or its creditors; or the debtor has not paid three consecutive wages to its employees in accordance with any employment contracts, bargaining agreements, special legislation or other regulations that regulate the relationship between the business and its employees, which is evidenced by the breakdown of due wages drawn up in accordance with the applicable regulations and confirmed by the Tax Authority (Articles 6(2), 6(4) and 6(5)). This legal presumption does not apply if, during the preliminary proceedings, the debtor settles all of its debts based on which its bank accounts were blocked, which must be evidenced by a certificate issued by FINA or by a publicly certified document (Article 6(3)).

A debtor which is a legal entity will be considered to be over-indebted if its assets are insufficient to cover its obligations (Article 7(1)). This shall not apply: where based on circumstances of a particular case it can be reasonably assumed that the debtor which is a legal entity will, by continuing its business operations, duly meet its obligations when due; or if a shareholder, who is a natural person, is jointly and severally liable for the obligations of the debtor (company), provided that insolvency proceedings have not been filed for or opened against the assets of such natural person (Article 7(2)).

Within the insolvency proceedings, a bankruptcy plan can be submitted by the insolvency practitioner to the court before the final hearing (Article 304(1)). If the creditors order the insolvency practitioner to prepare a bankruptcy plan, the insolvency practitioner must submit the bankruptcy plan to the court within the deadline set by the creditors in their decision (Article 304(2)). A debtor which files for the opening of insolvency proceedings may propose instructions for the adoption of a bankruptcy plan, while the creditors and the insolvency practitioner shall review such instructions at the examination hearing (Article 304(3)).

Is there any court involvement?

Yes, both reorganisation procedures are fully court-supervised.

Pre-bankruptcy procedure

The procedure is commenced on application to the competent commercial court. The court must decide whether to accept or reject the application. The court mainly supervises the procedure and decides on matters arising during the procedure if no other body has been assigned the power to do so (Article 22).

Bankruptcy procedure

Like the pre-bankruptcy procedure, this procedure is also commenced on application to the competent commercial court, which either accepts or rejects the application. The court then supervises the procedure and makes the decisions as set out in the law (Article 76).

Are there any hybrid reorganisation procedures?

No, there are no hybrid reorganisation procedures.

Does the debtor remain in possession of and continue to manage its business?

Pre-bankruptcy procedure

Yes, during the procedure, the debtor remains in possession of its business and assets and can carry on its business activities. However, the debtor may only make payments if they are necessary within the ordinary course of business, including any payments on new credit obtained during the procedure (Article 67). The debtor's activities are supervised by an insolvency practitioner known as a trustee (Article 24).

Bankruptcy procedure

No, on commencement of the procedure the right of the debtor to operate its business and make payments is terminated and is transferred to the insolvency practitioner, known as the bankruptcy administrator (Article 159).

Is there a need to appoint an insolvency practitioner?

Pre-bankruptcy procedure

Yes, the court may appoint an insolvency practitioner, also known as the trustee, if it deems that the appointment of a trustee is necessary (Article 33 (2)). The trustee's duties include the supervision of the debtor's business activities, particularly its financial operations, checking the debtor's assets and liabilities and, in respect of this procedure only and not the bankruptcy procedure, examining the claims of creditors that were registered with the Financial Agency (FINA) (Article 24). The trustee also has to supervise that the debtor only makes payments within the course of ordinary business and complies with the other restrictions set out in the Insolvency Law (Article 67).

Bankruptcy procedure

Yes, the court has to appoint an insolvency practitioner, also known as the bankruptcy administrator, from the official list of the insolvency practitioners, based on the requirements set out in Articles 77 and following of the Insolvency Law. The duties of the insolvency practitioner include assessment of the debtor's assets, management of its business, as well as liquidation and distribution of payments to creditors (Article 89).

Is there any applicable stay or moratorium?

Pre-bankruptcy procedure

Yes, on opening of the procedure by the court, an automatic moratorium arises which prohibits creditors from initiating any civil, enforcement or administrative proceedings against the debtor (Article 68 (1)). However, the moratorium does not apply to creditors with a right to separate settlement (i.e. secured creditors), creditors with exclusion rights, claims of employees arising out of employment relationships (for claims regarding salaries, severance pay, and damages due to work-related injuries or professional illness), security measures in criminal proceedings, tax proceedings for the determination of misuse of rights, and qualified financial agreements (Article 68 (4)).

Bankruptcy procedure

Yes, on commencement of the procedure, all actions against the debtor's estate are prohibited (Article 169). Secured creditors are also bound by this moratorium, but creditors with exclusion rights are not bound. Nevertheless, secured creditors are entitled to a separate settlement of their claims from the value of the secured assets, i.e. any proceeds from sale of such assets paid to secured creditors less any costs of sale, with any residual value retuning to the debtor's estate (Articles 247 to 257).

Is there any protection for essential contracts and to prevent termination of contracts by third parties?

Pre-bankruptcy procedure

No, the law does not provide for protection against third-party termination of contracts due to the debtor entering into the procedure. There are also no provisions protecting contracts that are essential for continuation of the debtor's activities.

Bankruptcy procedure

There is some limited protection for lease and rental contracts from termination by the counterparty of the debtor on the ground of non-payment or deterioration of the debtor's financial condition (Article 190). However, there is no wider protection for essential contracts and no general protection against third-party termination of contracts due to the debtor entering into the procedure.

Is new financing protected by law?

Pre-bankruptcy procedure

Yes, the debtor may, with the consent of creditors which together have more than-two thirds of legally established claims incur new indebtedness in cash for the purpose of temporary financing to ensure business continuity during the pre-bankruptcy proceedings (Article 62a). If bankruptcy proceedings are instituted against the debtor, the claims of creditors which have given the debtor funds for a new debt shall be settled up to the amount of the new debt before other bankruptcy creditors, except creditors of the first higher payment order (e.g. preferred creditors) (Article 138). Such new financing is protected from avoidance actions in a subsequent bankruptcy proceeding.

Bankruptcy procedure

No specific protection for new financing is available during the procedure. However, according to Article 230, the insolvency practitioner must obtain the consent of (a majority by value of) creditors if it intends to take a loan by which the insolvency would be significantly burdened. Furthermore, the court may (in its decision confirming the bankruptcy plan) determine that the claims of bankruptcy creditors will have a lower ranking than the claims of creditors which provide loans to the debtor during the supervision period for implementation of the bankruptcy plan. Such claims may not exceed the value of available, i.e. unsecured, assets included in the list of assets prepared for the purposes of the bankruptcy plan.

Does the law recognise separate classes of creditors for voting purposes?

Pre-bankruptcy procedure

Yes. The proposal for a restructuring plan must include an offer to classify creditors into groups in accordance with the rules on classification of creditors applicable to the bankruptcy plan (Article 27.8). Each group of creditors has the right to vote separately on the plan. When formulating groups or classes for voting purposes, the rules governing the bankruptcy procedure need to be applied (Article 59 (1)) (see below).

Bankruptcy procedure

Yes, creditors need to be grouped in separate classes for voting purposes (Article 308). According to Article 308, the classes are as follows: creditors who are entitled to separate settlement (i.e. secured creditors), where the insolvency plan interferes with their rights; ordinary (unsecured) creditors; insolvency creditors of lower ranking, where their claims are treated as set out in Article 311 (1); and worker's claims. Additional groups may be created based on the commonality of economic interests of these creditors. However, if the effects of the plan were the same in all the insolvency creditors, these creditors will not be classified as separate groups.

Each group of creditors with the right to vote is required to vote separately on the plan (Article 329).

What are the majorities required to approve a reorganisation plan?

Pre-bankruptcy procedure

The pre-bankruptcy plan is deemed to be accepted if the majority of all creditors vote in favour and the sum of claims of consenting creditors in each group exceeds twice the sum of claims of dissenting creditors (Article 59). Furthermore, the court shall not confirm the plan if: it is likely that the plan reduces the rights of creditors below what would reasonably be expected to materialise in case of a failure to implement

such a plan; it is not likely that the plan will lead to restore the ability of the debtor to make payments for the period of the current and during the two subsequent calendar years; the plan does not determine the settlement of amounts which creditors would have received had their claims not been contested; or the plan proposes to convert the claim of one or more creditors into the share capital of the debtor and the members of the debtor have not in accordance with the Companies Act adopted a decision authorising it (Article 61).

Bankruptcy procedure

The bankruptcy plan is deemed to be accepted if a majority of creditors in each class voted in favour of the plan and the sum of the claims of consenting creditors exceeds twice the sum of the claims of dissenting creditors. Creditors whose rights are not affected by the plan are deemed to have accepted the plan (Article 330).

The plan may be approved by cross-class cram down even if the required majority in each group has not been reached if: creditors of the dissenting group are not worse off than they would have been without the bankruptcy plan; if the dissenting group duly (appropriately) participates in the economic value (benefits) deriving from the proposed bankruptcy plan; and if the majority of the voting groups accepted the plan with the required majorities (Article 331).

Appropriate participation of the dissenting class in economic benefits is deemed to exist if under the plan: no other creditor is entitled to proceeds exceeding the entire amount of its claim; no proceeds are to be received by a creditor which, in the absence of the plan, would be in a class junior to the dissenting class, nor by the debtor or its shareholders; and if no other creditor, which, in the absence of the plan, would be in the same rank as the creditors of the dissenting class, is placed in a more favourable position than the other creditors (e.g. of the dissenting class).

Who does the reorganisation plan bind?

Pre-bankruptcy procedure

The confirmed pre-bankruptcy plan binds creditors which did not participate in the proceedings and creditors which were involved in the proceedings where their contested claims were subsequently established (Article 62). It does not affect creditors with rights of separate satisfaction, including secured creditors, unless the plan expressly provides otherwise and such creditors agree.

Bankruptcy procedure

The bankruptcy plan binds all creditors which participated in the procedure (Article 340). However, as with the plan in the pre-bankruptcy procedure, the bankruptcy plan cannot interfere with the rights of creditors with separate satisfaction rights, including secured creditors, unless the plan expressly provides otherwise and such creditors agree (Article 309).

What is the timeframe for the reorganisation procedure and any moratorium?

Pre-bankruptcy procedure

This must be completed no later than 300 days from the date of opening of proceedings. At the proposal of the debtor, the court may extend the period by a further 60 days if it considers that this would be appropriate for the conclusion of a pre-bankruptcy plan (Article 63). The moratorium lasts for the duration of the procedure.

Bankruptcy procedure

There is no maximum timeframe for the procedure. The moratorium lasts for the duration of the procedure.

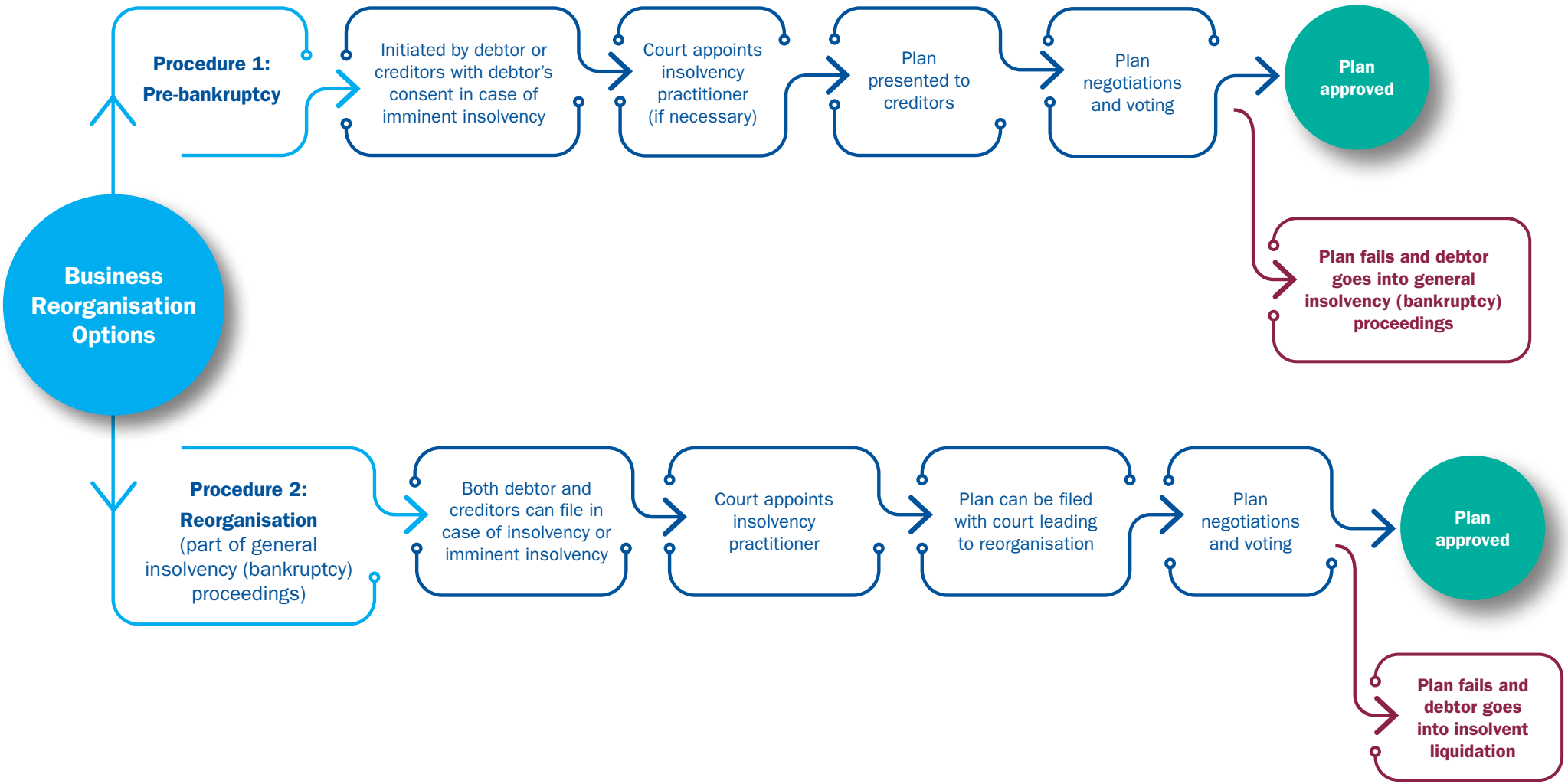
Has the UNCITRAL Model Law on Cross Border Insolvency been adopted?

No, Croatia has not adopted the UNCITRAL Model Law. However, as a member of the European Union Croatia is subject to **Regulation (EU) 2015/848** on insolvency proceedings, which governs the coordination of insolvency proceedings within the EU.

Special features/observations

- The Croatian insolvency framework includes the **Act on Extraordinary Administration Procedure in Companies of Systemic Importance**, which was applied to the restructuring of the systemically important supermarket group Agrokor. The entry conditions include: more than 5,000 employees (as average in a calendar year, including its affiliates), and a total debt of HRK 7,500,000,000 or more (approx. €1,000,000,000), (including its affiliates).
- In Croatia, the Financial Agency (FINA) supports the court by registration of creditors' claims in the pre-bankruptcy procedure. In the bankruptcy procedure, FINA conducts real estate auctions. In certain cases, FINA is also entitled to file for the opening of insolvency (bankruptcy) proceedings.

Overview of Croatian Business Reorganisation Procedures*



* This provides a high-level overview of business reorganisation procedures. See the commentary in this profile and the Insolvency Law for further details, including with respect to any applicable moratoria and creditor voting thresholds.

Contact

Catherine Bridge Zoller
Senior Counsel
Legal Transition Team
European Bank for Reconstruction & Development
LTTRestructuring@ebrd.com

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